

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



February 11, 2011

Mr. Christopher H. Collins, Esquire
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Washington, DC 20006

Re: Portals site on Maryland Avenue, SW-- height measuring point

Dear Mr. Collins:

This letter is to confirm my position in our recent meeting that Maryland Avenue, SW may continue to be used as the building height measuring point for development of the remaining two vacant parcels in the Portals site.

The Portals site is bounded by 12th, 14 and D Streets, SW, and Maine Avenue, SW. The site is bisected at grade by a railroad right-of-way, located in the original alignment of Maryland Avenue, SW as shown in the L'Enfant Plan. The present Maryland Avenue, SW, west of 12th Street, was built above the railroad tracks specifically for the purpose of facilitating development of the Portals site. Three of the five parcels that comprise the Portals site, as well as the adjacent Mandarin Oriental Hotel, have all used Maryland Avenue as the street from which the building heights on those parcels were measured. The two remaining vacant parcels at the Portals site have not yet been developed, and I understand your concern to be that upcoming proposed changes to the Zoning Regulations may be interpreted in a way that would not allow Maryland Avenue to continue to be used for that purpose. The Portals site has a unique history of land use and development approvals, indicating an intention from the very beginning, and throughout the development process, to use Maryland Avenue over the railroad tracks as the height measuring point. I see no reason to change that long-standing precedent.

A summary of the project history is as follows:

1986--The DC Redevelopment Land Agency (RLA) executed an Exclusive Rights Agreement (ERA) with Portals Development Associates (PDA), for development of the Portals site. At that time, the site and most of Southwest DC were not subject to the then-current zoning regulations, but rather were governed by the pre-1958 zoning regulations per the Southwest Urban Renewal Plan. The project plans submitted at that time showed that the height of the proposed Portals project was to be measured from the yet-to-be-constructed Maryland Avenue over the railroad tracks, with a building height measurement datum of 44 ft. The roadway over the railroad tracks was eventually constructed to a building height measuring point elevation of

47 ft. I understand that the ability of the development to proceed using Maryland Avenue over the railroad tracks as the building height measurement point was a critical consideration in the negotiations leading up to this ERA.

1989--PDA and RLA entered into a Land Disposition Agreement (LDA) for the Portals site in 1989. The construction of Maryland Avenue was a requirement of the LDA, as a public improvement. All building drawings subsequent to that time showed a building height measurement point of 47 ft.

Early 1990's--Maryland Avenue and Parcels I and II of the Portals project (1250 and 1280 Maryland Avenue, SW) were developed in the early 1990's. The project plans were subject to review by the RLA Architectural Review Panel, and by the Commission of Fine Arts, per the Shipstead-Luce Act, and were approved by both agencies. Maryland Avenue was used as the height measurement point for the new buildings.

1995--By Zoning Commission Order No. 776, the Zoning Commission rezoned the Portals site and the surrounding area from Urban Renewal (UR) to C-3-C.

1999--The Council of the District of Columbia enacted DC Law 12-234, the Schedule of Heights of Buildings Amendment Act of 1998, to "amend Paragraph 14 of the Schedule of Heights...to provide more uniformity in the heights and setbacks of buildings to be developed on a site bounded by 14th Street, SW, D Street, SW, 12th Street, SW, and Maine Avenue, SW, in Ward 2." The Committee Report indicates that the maximum permitted building height under the 1910 Height Act is 130 ft., as measured from the Maryland Avenue, SW frontage. The purpose of that legislation was to amend the Schedule of Heights to allow a building on a portion of the Portals site, with frontage on 14th Street, to be set back an additional 20 and thereby allow its height to be measured from Maryland Avenue, SW. DHCD testified on behalf of the Executive Branch in support of this amendment, because it would prevent "an awkward and unbalanced building scheme with three of the buildings along new Maryland Avenue with a uniform building height of 90 ft. and a fourth building with a height of less than 60 ft."

2001-- Per the Shipstead-Luce Act, the Commission of Fine Arts reviewed and approved in concept the development of the remaining Parcels III, IV and V of the Portals site. The buildings approved in that submission used Maryland Avenue as the measuring point.

2002--Construction commenced on the Mandarin Oriental Hotel on the southwest portion of the Portals site, using the same Maryland Avenue point of measurement as the Portals buildings on Parcels I and II. CFA approved that project, pursuant to the Shipstead-Luce Act.

2003--The Zoning Commission amended the definition of Building Height and Natural Grade in Case No. 02-35. On Page 3 of the Notice of Final Rulemaking and Order in that case, the Commission noted that PDA's counsel testified in opposition to language in the original version of the amendment that would prohibit building height measurement from a "a street elevated above grade", but in support of the amended substitute language to prohibit such

measurement from a "bridge or viaduct". The "bridge or viaduct" language was adopted by the Zoning Commission, rather than the "street elevated above grade" language, which preserved the ability to continue using Maryland Avenue for height measurement purposes for the remaining Portals development sites.

2005--The office/retail building on Parcel III was constructed, with approval from CFA, and using the same Maryland Avenue building height measurement point as used for Parcels I and II, and the Mandarin Oriental Hotel. The Parcel III office/retail building includes a blank western wall, and that building is intended to be joined with the future office building development to the west on Parcel IV as the second half of that combined building. Development of Parcel IV and Parcel V were part of the development plan submitted to the CFA and approved per the Shipstead-Luce Act in 2001.

2008 and 2009--In Case No. 08-06-01, the Zoning Commission considered the proposed amendments to the Zoning Regulations regarding building height. Counsel for PDA appeared in that case to oppose Recommendation B.3 on Page 22 of OP's September 15, 2008 Report in that case, which stated that " the height of a building will not be measured from the human-constructed elevation" of a "bridge, viaduct, embankment, ramp, abutment, tunnel, or other type of artificial elevation...". Subsequently, OP issued a report on December 1, 2008, which modified the recommendation to state that "Where the measuring point elevation has been previously determined for purposes of buildings and/or elevated streets, the previously-recognized elevation will control." This same language appeared in the Height worksheet prepared by OP and the OAG to aid the Commission in its discussion on February 9, 2009.

2010--The Zoning Commission held a subsequent public hearing on September 20, 2010 in Case No. 08-06-01, and subsequently issued a Notice of Proposed Rulemaking that was published in the DC Register on December 3, 2010. Section 402.4 of that Notice states the proposed regulation as follows:

"When the curb grade has been artificially changed by a bridge, viaduct, embankment,...or other type of artificial elevation or depression, the height of a building shall be measured using the first of the following four methods that is applicable to the site:

- (a) An elevation or means of determination established for a specific zone elsewhere in this title;
- (b) An elevation for the site that was determined prior to the effective date of this section by the Zoning Administrator, or the Redevelopment Land Agency, its predecessors or successors;
- (c) A street frontage of the building not affected by the artificial elevation; or

(d) A level determined by the Zoning Administrator to represent the logical continuation of the surrounding street grid where height is not affected by the discontinuation of the natural elevation.

I understand that the concern of PDA is that while the RLA approved the building height for Parcels I and II, and the Zoning Administrator approved the building height for Parcel III and the Mandarin Oriental Hotel, the Zoning Administrator has not yet determined the building height measuring point elevation for Parcels IV or V, and one could argue that the RLA, and its predecessors and successors did not specifically approve the measurement elevations for these two remaining specific development sites either. In order to provide certainty to PDA going forward, I confirm that Maryland Avenue, SW, over the railroad tracks, may continue to be used for height measurement point purposes for the remaining two development Parcels IV and V in the Portals site.

Please let me know if you have any further questions.

Sincerely

A handwritten signature in black ink, appearing to read "Matthew LeGrant", with a stylized flourish at the end.

Matthew LeGrant
Zoning Administrator